

**Sublease & Lease
Agreement
between the
City of Lincoln, University of
Nebraska, NEBCO
and the
Nebraska School Activities
Association**

**NSAA Facilities Lease to
Haymarket Park – Parcel "A"**

March 2006

INTRODUCTION:

This Sublease & Lease Agreement (Agreement) is made _____, 2006, by and between the City of Lincoln, Nebraska, a political subdivision of the state of Nebraska, (City) and the Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska--Lincoln (University), NEBCO, Inc., a Nebraska corporation (NEBCO), and the Board of Control of the Nebraska School Activities Association (NSAA), a Nebraska non-profit association. The University and NEBCO are sometimes collectively referred to as the Primary Tenant (Primary Tenant); and the NSAA is sometimes referred to as the Secondary Tenant). The City, University, NEBCO and the NSAA are individually referred to as "Party" and collectively referred to as the "Parties".

RECITALS:

The City is the owner of real property near Memorial Stadium west of Interstate 180 near 6th and Charleston Streets, Lincoln Nebraska as generally shown on the Site Plan in Attachment A, which is attached hereto and incorporated herein by this reference and more particularly described as the NSAA Project Site on Attachment B, which is attached hereto and incorporated herein by this reference.

The City and Primary Tenants, and the Secondary Tenant are executing and entering into this Agreement to set forth agreements of the City, Primary Tenants and the Secondary Tenant with respect to the lease, development and operation of an office building to house the Secondary Tenant's operations, overflow parking for Primary Tenant Events at the Ballpark Facilities and other Operations related to athletics, music, speech, drama, and recreational activities in the state of Nebraska located on the northern portion of the NSAA Project Site and more particularly described on Attachment B as Parcel A (Now Block 1, Lot 1, Lincoln Ballpark Addition). The Primary Tenants will continue to lease, develop and operate the Ballpark Facilities located in the central portion of the Project Site and more particularly described on Attachment B as Parcel B (Now Block 2 Lot 1, Lincoln Ballpark Addition). The City will continue to own, develop and operate the Public Works 901 Building Site located on the southern portion of the Project Site and more particularly described on Attachment B as Parcel C (Now a portion of Block 2, Lot 1, Lincoln Ballpark Addition).

City, Primary Tenant and the Secondary Tenant mutually agree that this Agreement and the development and operation of an office building to house the Secondary Tenant's operations, to provide overflow parking for Primary Tenant Events at the Ballpark Facilities and other Operations related to athletics, music, speech, drama, and recreational activities in the state of Nebraska is in the vital and best interest of the City and the Primary Tenants and is in furtherance of the health, safety, and

welfare of the residents of the City and the State of Nebraska, in accordance with the public purposes and provisions of the Administrative Agreements and applicable laws and requirements under which the Parties have undertaken the Lincoln Ballpark Project in 2000, and the NSAA Project in 2006, and the related activities of the Secondary Tenant.

NOW THEREFORE, in consideration of the mutual obligations in this Agreement, the City, Primary Tenant and Secondary Tenant agree as follows:

I. DEFINITIONS

Capitalized terms in this Agreement shall have the same meaning as in the Administrative Agreements except the following definitions shall apply for words and phrases as used in this Agreement unless more particularly defined in this Agreement.

2000 Lease Agreement shall mean the agreement approved by the City as Ordinance No. 17627 between the City as landlord and the University and NEBCO as Tenants.

Administrator shall mean a duly appointed representative of a Party who has binding authority to grant consent, approval, decision or determination hereunder on behalf of a Party. Administrators shall mean the City, NEBCO, University and NSAA Administrators collectively. References to the Primary Tenant's Administrators shall refer to the NEBCO and University Administrators collectively and the Secondary Tenant's Administrator shall refer to the NSAA's Executive Director.

Agreement shall mean this Sublease & Lease Agreement, dated as of the date written above by and between the City, University, NEBCO and NSAA, including any amendments, modifications, extensions and substitutions, now or hereafter executed.

City shall mean the City of Lincoln, Nebraska, a political subdivision of the State of Nebraska.

Force Majeure shall include Acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, nuclear accidents, wars, or failure of utilities. Force Majeure shall not include economic hardship.

Hazardous Material shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Nebraska or the United States Government. The term "Hazardous Material" includes, without limitation, "hazardous waste," "oil or petroleum product," "pollutant," "contaminant," or "hazardous substance" as regulated pursuant to the Federal Water Pollution Control Act, as amended 33 U.S.C. §1251 et seq., the Federal Resource Conservation and Recovery Act, as amended 42 U.S.C. § 6901 et seq., or the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq.

NSAA Facilities shall mean the following facilities: buildings, associated open space, parking lots, and/or other related amenities, improvements and Personal Property as legally described as the Leased Premises on Attachment B as Parcel A (Now Block 1, Lot 1, Lincoln Ballpark Addition), to house the Secondary Tenant's operations, and other Operations related to athletics, music, speech, drama, and recreational activities in the state of Nebraska.

NSAA Administrative Agreements shall mean Project related agreements entered into as contemplated and provided for in this Agreement and as allowed by law, specifically including, but not limited to, NSAA Construction Agreement, this Agreement, and any design, construction, sublease, parking, development and other necessary agreements to fulfill Project related obligations including amendments and change orders thereto; provided, that the Lincoln City Council shall approve any lease, bonds, notes or other obligations as required by law, and the University Board of Regents shall approve any lease involving the University related to the Project.

NSAA Construction Agreement shall mean the Construction Agreement, by and between the City and the NSAA as Secondary Tenant including any amendments, modifications, extension and substitutions, now or hereafter executed. Upon execution of the same as provided in this Agreement, the Construction Agreement is incorporated herein by this reference. The Construction Agreement shall govern the construction of the NSAA Facilities, and shall address issues of design development and review, budget, scope development, construction schedule, project coordination, and other matters related to the construction of the NSAA facilities.

Sublease and Lease Agreement shall mean this Agreement, dated as of this even date by and between the City as landlord, University, NEBCO as both Primary Tenants and Sublessor to NSAA and NSAA as Secondary Tenant and Sublessee to the Primary Tenant, including any amendments, modifications, extension and substitutions, now or hereafter executed.

NSAA Operating Agreement shall mean the Operating Agreement, dated as of this same date by and between the University, NEBCO and the NSAA, including any amendments, modifications, extension and substitutions, now or hereafter executed.

NSAA Project shall mean the jointly planned, development and implementation of the design, construction and operation of an office building to house the Secondary Tenant's operations, and other Operations related to athletics, music, speech, drama, and recreational activities in the state of Nebraska.

NSAA Project Site shall include the property described on Attachment B as Parcel A (now Block 1, Lot 1, Lincoln Ballpark Addition). NEBCO shall mean NEBCO, Inc., a Nebraska corporation.

NSAA Site Plan shall mean the site plan of the NSAA Project Site, Attachment B, Parcel A, (now Block 1, Lot 1, Lincoln Ballpark Addition) as shown in the Lease Agreement. Said Site Plan is incorporated herein by this reference.

Maintenance shall include maintenance, repairs, replacement, renovation, updating, modernization and Capital Improvement of improvements and related Personal Property, utilities and infrastructure charges, custodial, snow removal, trees, landscape and lawn care, and trash pickup and removal.

Memorial Stadium Events shall mean the events or activities sponsored by the University or permitted by the University and held in Memorial Stadium. The Parties anticipate that the parking lots for the Office Facilities may provide parking for the patrons attending Memorial Stadium Events.

Party shall mean the City, University, NEBCO and NSAA individually.

Parties shall mean the City, University, NEBCO, and NSAA collectively.

Performance Licenses may include any appropriate American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Inc. (BMI), SESAC and other similar site licenses.

Personal Property shall include personal property, tools, equipment, and trade fixtures that are not deemed real property that are necessary or desirable to operate the Facilities.

Public Works 901 Building Site shall mean the southern portion of the Project Site that is owned, developed and operated by the City, more particularly described on Attachment B as Parcel C (now a portion of Block 2, lot 1, Lincoln Ballpark Addition).

Substantial Completion shall mean substantial completion of the NSAA Project Facilities so that said Facilities may be reasonably used for their intended purposes.

Primary Tenant shall mean the University and NEBCO as Secondary Tenants in common under this Agreement and the Operating Agreement.

Secondary Tenant shall mean the NSAA.

Primary Tenant Events shall mean University Events, NEBCO Events and City Events/Special Events as provided in the Administrative Agreements.

University shall mean the Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska--Lincoln.

Warranty Claim shall mean warranty, guaranty, and maintenance agreements and similar claims under any and all contracts or other agreements with third parties for the design, construction, services, work and improvements of the Facilities including, but not limited to any and all such claims under the NSAA Project construction contract.

II. RELATIONSHIP OF PARTIES

- A. **Independent Authority.** The Parties agree that each of them is acting on its own behalf and not as an employee, joint venturer or partner of the other. Each Party is interested only in the results obtained from this Agreement and each Party shall be in exclusive charge and control of its own performance according to its own means and methods. Nothing in this Agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the Parties.
- B. **Tenants in Common.** The University and NEBCO are Tenants in common under this the 2000 Lease Agreement for the Ballpark Facilities and not as employee, joint venturer or partner of the other. The University and NEBCO's Sublessee and Secondary Tenant in common relationship is more particularly defined in this Agreement and in the NSAA Operating Agreement. The NSAA is not a Tenant in common but a sublessee of the Primary Tenant and direct lessee of the City, should the Primary Tenant default or terminate its agreement with the City prior to the expiration of this Agreement.

III. BEST EFFORTS

Consistent with the relationship of the Parties under this Agreement, the City, Primary Tenants, and Secondary Tenant shall at all times and in all respects use their

respective best efforts to fulfill and complete the object and purpose of this Agreement and maintain an efficient and first quality operation at the NSAA Facilities and Ballpark Facilities.

IV. REPRESENTATIONS AND WARRANTIES

Each Party to this Agreement makes the following representations and warranties in consideration of the duties and obligations of this Agreement:

- A. **Power and Approval.** The City is a political subdivision of the State of Nebraska, NEBCO is a corporation existing and in good standing under the laws of Nebraska, the University is a public body corporate in the state of Nebraska, and the NSAA is a non-profit corporation existing and in good standing under the laws of Nebraska. Each Party has the power to enter into and carry out the Agreements to which it is a Party. Each Party has duly approved the execution of the Administrative Agreements which accordingly constitute valid and legally binding obligations of each Party.
- B. **No Litigation.** To the best of each Party's knowledge, there is no litigation now pending or threatened, challenging the powers or in any way affecting any of Administrative Agreements to which it is a Party or this Agreement.
- C. **Execution and Administration.** The Agreement and each Party's respective execution and administration of the same do not and will not (a) violate any law or regulation or any order or decree of any court or governmental instrumentality which violation would materially and adversely affect the ability to perform its obligations under the Agreement or (b) conflict with or would result in the breach of or constitute a default under the Agreements, or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or instrument which would materially and adversely affect the ability to perform its obligations under the Agreement.
- D. **No Default.** To the best of each Party's knowledge, no event or condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute a default of the Interlocal Agreement, Memorandum of Agreement or Administrative Agreements or that could otherwise materially adversely affect the Party's ability to perform the Interlocal Agreement, Memorandum of Agreement or Administrative Agreements.

V. LEASE

Primary Tenants agree to Sublease and City agrees to lease to Secondary Tenant Parcel A as described on Attachment B upon the terms and conditions of this Agreement. The Primary Tenants agree to sublease and that the City may thereafter upon the default or termination of the 2000 Lease Agreement separately lease Parcel A

as described on Attachment B to the Secondary Tenant, and further agree to sublease to the Secondary Tenant Parcel A as described on Attachment B upon the terms and conditions of this Agreement.

VI. TERM; OPTIONS

- A. **Initial Term.** This Agreement shall commence on April 1, 2006 and shall continue for a period of three hundred and fifty-two (352) months to include September 30, 2035, unless extended or sooner terminated as provided in this Agreement.
- B. **Options to Extend.** Provided Secondary Tenant has timely and faithfully performed its obligations under this Agreement throughout the term hereof, timely exercises this right as hereinafter provided, and is not in default at the time of exercising such right or at the commencement of any extension period, Secondary Tenant shall have the right to extend the term of this Agreement for seven (7) periods of five (5) years on the same terms and conditions as contained in this Agreement. Prior to the date the term of this Agreement or the extension terms, as the case may be, would otherwise expire, Secondary Tenant shall notify the City in writing of its election to exercise the right to extend the term hereof as provided above. The right to extend the term of this Agreement shall terminate if not timely exercised as herein provided. Secondary Tenant's election to exercise the right to extend the term of this Agreement shall be deemed an acceptance of the NSAA Facilities in their then condition. The word "term" as used in this Agreement shall also include any extensions thereof. In the event of default or termination of the 2000 Lease Agreement, the remaining initial term and the options to extend may be exercised by the Secondary Tenant separately from and running to the City as owner as a stand alone lease upon the same terms and conditions as provided herein except for those provisions which in context apply only to the Primary Tenant or the relationship of the parties as it applies for the Sublease provisions between the NSAA as sublessee and the Primary Tenant as Sublessor.

VII. RENT

- A. **Contribution of NSAA Facilities.** The Secondary Tenant, at its expense, is designing, constructing and operating the NSAA Facilities improvements and hereby agrees to contribute the NSAA Facilities improvements (excluding Personal Property) to the City as consideration for the right to lease Parcel A of Attachment B for the term and extension terms of this Agreement, without additional rent payments.
- B. **Capitalization Required.** The Secondary Tenant, the NSAA, shall as capitalization contribute the NSAA Facilities; the NSAA shall not be required to

contribute cash or any other additional capitalization as consideration for the use of Parcel A of Attachment B.

- C. **NSAA Facilities Construction.** City acknowledges that the Secondary Tenant has not yet constructed the NSAA Facilities. However, the Secondary Tenant agrees to construct the NSAA Facilities as expeditiously as possible for use by the Secondary Tenant pursuant to this Lease Agreement. The Administrators in this Agreement are hereby authorized to prepare, execute and implement an NSAA Construction Agreement for the construction of the NSAA Facilities on the NSAA Project Site in furtherance of this Agreement; provided, the NSAA Construction Agreement is also reviewed and approved by the City Attorney and General Counsel for the University.
- D. **Maintenance Responsibilities.** Secondary Tenant will pay operating and maintenance costs for the NSAA Facilities. On or before the anniversary date of this Agreement, the Secondary Tenant shall provide the City a written report describing the Secondary Tenant's Maintenance efforts and Capital Improvements constructed, if any, made to the NSAA Facilities the prior lease year.
- E. **Obligations of Secondary Tenant Unconditional.** The obligation of the Secondary Tenant to pay the premiums or charges necessary to maintain or cause to be maintained the insurance required by Article XXV, and to provide the indemnity required set forth herein shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set-off, counterclaim, abatement or otherwise except as expressly permitted by this Agreement.

VIII. REASONABLE CONSENT AND APPROVALS

- A. **Timely Consent and Approvals.** Whenever approval or consent shall be required under this Agreement, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. The approval or consent of the City or Primary Tenant under Article XV shall be deemed to have been given, unless within thirty (30) days of the request for such approval or consent, the City or Primary Tenant notifies the Secondary Tenant that the City or Primary Tenant is denying such approval or consent. Except for Article XV below, approval or consent of a Party shall be deemed to have been given, unless within fourteen (14) days of the request for such approval or consent, the receiving Party, as appropriate, notifies the requesting Party that the receiving Party is denying such approval or consent. Any refusal under this Agreement must state the reasonable ground for the refusal to grant such approval or consent.
- B. **Administrator Approval.** Any consent, approval, decision or determination hereunder by each Administrator appointed herein shall be binding on the Party

that the Administrator represents; provided, however, any modification or amendment to the terms and conditions of this Agreement shall be in writing and approved by all the Parties.

- C. **City Administrator.** City hereby designates the Mayor of the City of Lincoln, to serve as the City Administrator or his or her designee.
- D. **NEBCO Administrator.** NEBCO hereby designates the President of NEBCO to serve as the NEBCO Administrator or his or her designee.
- E. **University Administrator.** The University hereby designates the President of the University of Nebraska to serve as the University Administrator or his or her designee.
- F. **NSAA Administrator.** NSAA hereby designates the Executive Director of the NSAA to serve as the NSAA Administrator or his or her designee.

IX. BROKER FEES

Each party to this Agreement warrants that it has not incurred any real estate brokerage fees, finders' fees, loan brokerage fees or any other fees to any third party in connection with this Agreement. In the event that any third party, institutes legal action in any effort to recover such fees, the Parties shall jointly defend such action. If a judgment is obtained against the Parties jointly, the Party responsible for breach of this warranty shall reimburse the other for the latter's attorney fees, court costs, expenses and share of the judgment.

X. AMERICANS WITH DISABILITIES ACT (ADA)

The Secondary Tenant shall comply with the Americans With Disabilities Act. The Secondary Tenant shall take all reasonable steps to provide services for individuals with disabilities as required by the Act. The Secondary Tenant shall defend, indemnify, protect and hold harmless the Primary Tenant and City and all the officers, employees, and agents of the Primary Tenant and City against any and all claims, demands, losses, actions or causes of action of whatsoever kind, arising or resulting from the Secondary Tenant's failure to comply with and fulfill the requirements of the ADA.

XII. OPERATION OF FACILITIES

- A. **Public Purpose; Ownership.** Under Article II Section 5 of the City's Charter, the City has the power to join with other subdivisions, agencies, or public corporations, whether federal, state or local, or with any number or combination thereof, by contract or otherwise, as may be permitted by the laws of the State of

Nebraska, in the joint ownership, operation, or performance of any property, facility, power or function, or in agreements containing provisions that one or more thereof operate or perform for the other or others and to appropriate and spend money for such public purposes. The City acknowledges that the construction and operation of the NSAA Facilities is in the public interest of the City and the health, safety, morals and welfare of its residents and in accordance with the public purposes and provisions of the applicable laws. The City will own the NSAA Project Site, including the NSAA Facilities subject to the provisions of Article XV.

- B. **Use of NSAA's Facilities.** Throughout the term of this Agreement, Secondary Tenant shall occupy and use the NSAA Facilities for the primary use of the business operations of the NSAA for the governance of high school activities in the State of Nebraska, overflow parking for Primary Tenant Events, and other athletic, music, speech, drama and recreational activities benefiting the citizens of the City of Lincoln and the State of Nebraska. The Secondary Tenant's use of the NSAA Facilities may include secondary uses of conducting conventions, meetings, and exhibitions within the NSAA facilities that will encourage tourism and economic development in the City of Lincoln. Overflow parking for Primary Tenant Events shall be administered so as to cause the least interference with NSAA Facilities operations during regular business hours from 8:00 AM to 5:00 PM as may be more particularly provided in the NSAA Joint Operating Agreement. and The NSAA Facilities parking area shall be provided to the City and Primary Tenant for City Events and Primary Tenant Events without charge.
- C. **Maintenance and Operation Expenses of the NSAA Facilities.** Secondary Tenant shall, at its sole cost and expense, pay for the Maintenance and operation expenses of the NSAA Facilities, including the interior and exterior, structural and nonstructural portions of the improvements, in as good repair, reasonable wear and tear excepted. The City will not be responsible nor liable for the Maintenance and operation of the NSAA Facilities.
- D. **Right to Carry Out Maintenance.** Except as provided in this Agreement, the City and Primary Tenant shall not be permitted to make any Capital Improvements or Maintenance to the NSAA Facilities without the written consent of the Secondary Tenant. The Primary Tenant or City (after giving thirty (30) days notice to Secondary Tenant to make necessary Maintenance) may carry out Maintenance to the NSAA Facilities without the written consent of the Secondary Tenant if it reasonably appears that the Secondary Tenant has failed to carry out the Maintenance. The City or Primary Tenant may carry out Maintenance to the NSAA Facilities without the written consent of the Secondary Tenant and without advance notice in an emergency situation. The cost of any such repairs made by the City pursuant to this paragraph may be charged to the Secondary Tenant as additional rent. Nothing in this paragraph shall be interpreted as requiring the City to perform any such acts or authorizing the Primary Tenant in the event of termination or default by the Primary Tenant under the terms of the 2000 Lease Agreement.

- E. **Capital Improvements.** The Secondary Tenant, at Secondary Tenant's expense, shall carry out any Capital Improvements on or in the NSAA Facilities subsequent to Substantial Completion. The Capital Improvements are subject to full compliance with all applicable ordinances, statutes, and codes, including building codes, zoning and parking requirements, and shall be consistent with the overall appearance of and permitted uses of the NSAA Facilities **as set forth in Paragraph XIV B.** Secondary Tenant agrees to consult in advance with the Primary Tenant and the City's Urban Design Committee or similar City design committee(s); provided, however, Secondary Tenant is not required to consult in advance for any (1) nonstructural remodeling or installation or removal of trade fixtures and equipment; (2) temporary improvements or alterations to accommodate particular Events; (3) Capital Improvements required to comply with any applicable law or any Sanctioning Association; (4) Capital Improvements resulting from restorations or repairs of existing facilities; or (5) any Capital Improvements (structural or nonstructural) costing less than \$100,000, with respect to any single alteration, or \$500,000 in any calendar year with respect to a series of Capital Improvements.
- F. **Right of Inspection.** Prior to construction of the Capital Improvements, the Secondary Tenant will provide the Primary Tenant and City the Secondary Tenant's conceptual design drawings, construction drawings and cost estimates for such construction work. Upon completion of any new Capital Improvements or construction, Secondary Tenant shall obtain a written certification addressed to Primary Tenant and City from a licensed architect or engineer reasonably acceptable to the Primary Tenant and City stating that the construction has been completed substantially in accordance with the construction drawings and that, to the best of each professional's knowledge, the completed improvements are in compliance with all applicable ordinances, statutes, and codes.
- G. **Access.** The Primary Tenant and City, its employees, and its agents shall have access to the NSAA Facilities at reasonable times for the purpose of inspection, or for necessary activities related to the Administrative Agreements.
- H. **Taxes and other NSAA Facilities Costs.** Secondary Tenant shall pay as the same shall become due and prior to delinquency each and every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, by reason of Secondary Tenant's estate or interest in the NSAA Facilities or any portion thereof or by reason of or in any manner connected with or arising out of Secondary Tenant's possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the NSAA Facilities, or any part thereof. Secondary Tenant shall pay and discharge, prior to the delinquency thereof, any and all lawful special assessments, taxes, occupation license, water charges, or sewage disposal charge imposed on the NSAA Facilities and Secondary Tenant's use and occupancy of the NSAA Facilities, and all other governmental taxes, impositions, and charges of every kind and nature, ordinary or extraordinary, general or special foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, and all applicable interest and penalties, if any,

which at any time during the Term becomes due and payable by Secondary Tenant because of its rights or obligations under this Agreement and which is lawfully levied, assessed or imposed on Secondary Tenant or on Secondary Tenant's estate in the NSAA Facilities under or by virtue of any present or future law, statute, ordinance, regulation or other requirement of any governmental authority, whether federal, state, county, city, municipal, school or otherwise. Secondary Tenant, upon written notice to City, may contest in good faith any such taxes, imposition, charge or assessment levied by any governmental authority (other than water charges or sewage disposal charges), and in such event may permit such taxes, imposition, charge or assessment (other than water charges or sewage disposal charges) to remain unsatisfied during the period of such contest and any appeal, provided, however, that prior to the commencement of such contest Secondary Tenant shall demonstrate to City either (1) that Secondary Tenant will have sufficient funds to pay such assessment if the contest is unsuccessful or (2) that Secondary Tenant has deposited into a separate escrow account funds equal to the contested amount, together with the anticipated interest and penalties, if any, that would be incurred in the event of an unfavorable disposition. Secondary Tenant shall furnish to City promptly upon request, proof of the payment or timely contest of any such tax, assessment or other governmental or similar charge or any utility charge which is payable by Secondary Tenant, or evidence of the deposit of such funds into a reserve account, all as set forth above. The City acknowledges that the City owns the NSAA Project Site, including the NSAA Facilities and believes the NSAA Facilities is a public purpose and should be exempt from ad valorem (real property) taxes. The City agrees to cooperate with the Secondary Tenant in any contest that does not recognize the City's ownership and public purpose in the NSAA Facilities.

- I. **Utilities.** Secondary Tenant agrees to pay as the same shall become due and prior to delinquency, all utility payments including water, gas, electricity, sewer, trash removal and similar payments related to the NSAA Facilities. Secondary Tenant also shall pay or cause to be paid all lawful charges for gas, water, sewer, electricity, light, heat, power, telephone, and other utilities and services used rendered or supplied to, upon or in connection with the NSAA Facilities.
- J. **Liens and Encumbrances.** Secondary Tenant covenants and agrees that, except for the Administrative Agreements, it will not create or suffer to be created by, through, or under Secondary Tenant any lien, encumbrance or charge upon the NSAA Facilities or Secondary Tenant's interest in this Agreement without first obtaining the City's prior approval of the terms of the proposed lien, encumbrances or charge upon the NSAA Facilities or Secondary Tenant's interest in this Agreement; provided that, the Secondary Tenant does not need the City's prior approval for a loan, advance, lease-purchase financing, installment purchase or other financing arrangements provided to a Secondary Tenant from a wholly own subsidiary of a Secondary Tenant. Secondary Tenant shall satisfy or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty (60) days after the same occurs, all claims and

demands for labor, materials, supplies or other items which, if not satisfied, might by law become a construction lien upon the NSAA Facilities or any part thereof. If any such construction lien is filed or asserted against Secondary Tenant or the NSAA Facilities by reason of work, labor, services or materials supplied or claimed to have been supplied on or to Secondary Tenant or the NSAA Facilities at the request or with the permission of Secondary Tenant or of anyone claiming under it, Secondary Tenant shall, within sixty (60) days after it receives notice of the filing thereof or the assertion thereof against the NSAA Facilities, cause the same to be discharged of record, or effectively prevent the enforcement or foreclosure thereof, by contest, payment, deposit, bond, order of court or otherwise.

- K. **Maintenance and Warranty Contracts.** Secondary Tenant agrees that City is a third-party beneficiary of the maintenance and warranty contracts and hereby conveys, transfers and assigns to City the nonexclusive right to enforce any and all of the respective obligations of any person under the maintenance and warranty contracts, including, but not limited to, any and all representations and warranties thereunder. City and Secondary Tenant shall cooperate with each other in prosecuting any and all Warranty Claims. All recoveries from any such Warranty Claims shall be applied, first, to the cost of collection, second, on a proportional basis to City and Secondary Tenant to reimburse for the actual cost and expenses incurred in order to repair, restore, renew or replace any part of the NSAA Facilities as to which such Warranty Claim relates.
- L. **Right of Secondary Tenant to Revenues.** Secondary Tenant shall be entitled to, and is hereby granted the exclusive right to, contract for, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with Secondary Tenant Events, promotion of Secondary Tenant Events at the NSAA Facilities, the sale of Concessions food, beverages, merchandise, programs and other goods and wares of any nature whatsoever at Secondary Tenant Events, and all telecommunications rights for Secondary Tenant Events.
- M. **Naming and Other Rights.** Secondary Tenant shall have the full right to provide a name or names for the NSAA Facilities and improvements therein during the term of this Agreement; provided, however, that Secondary Tenant will not use a name (or identify with signage, advertising, and other identification monuments or visible media containing the name) that is contrary or in violation of the advertising restriction stated in Article XIX C.; and further provided that, the Secondary Tenant will not use a name (or identify with signage, advertising, and other identification monuments or visible media containing the name) for the NSAA Facilities or other offices or exhibition facilities that will cause public confusion as to the location of the NSAA Facilities or other offices and exhibition facilities other than in the City of Lincoln, Nebraska. Any advertising, documents or media information prepared by or within the control of Secondary Tenant describing any Events at the NSAA Facilities shall identify the municipal location of the NSAA Facilities as Lincoln, Nebraska. Without limiting the foregoing,

Secondary Tenant shall have the exclusive right to contract with any person with respect to use and enjoyment of such name for the NSAA Facilities and improvements therein and the exclusive right to enter into agreements with others whereby such others may display names, logos, trademarks, advertisements, slogans, emblems, brand names, and the like in or about the NSAA Facilities and improvements subject to the advertising restrictions in stated in Article XIX C. Secondary Tenant reserves the right to change the name of the NSAA Facilities or improvements therein from time to time.

- N. **Parking Lots.** Until otherwise agreed by the Administrators, it is understood and agreed that Secondary Tenant shall be under no obligation to provide free parking for non-Primary Tenant and City Event uses occurring within or outside the Project Site.

XIII. TRANSFER, CITY CONSENT, CONDITIONS AND EXCEPTIONS

- A. **Transfer By Secondary Tenant; City Consent Required.** Unless otherwise stated herein, this Agreement and any rights, title, obligations or duties under this Agreement hereunder shall not be assigned, sublet or otherwise transferred (collectively Transfer) by Secondary Tenant without the prior written consent of the City, the University and NEBCO, which consent shall not be unreasonably withheld or delayed.
- B. **Transfer Conditions.** If City consent is required for a Transfer under this Agreement and the City gives such consent, then such Transfer shall be subject to and made upon the following conditions:
1. Any such Transfer shall be subject to the terms of this Agreement and any extensions thereof and the term thereof may not extend beyond the expiration of the term of this Agreement and any extensions thereof;
 2. The use to be made of the sublease, licensed or assigned space shall be a legal use and in keeping with the character of the NSAA Facilities; and
 3. Unless otherwise stated herein, no transferee shall have the right to further Transfer without the City's prior approval.
- C. **No Release of Secondary Tenant Obligations.** Consent by the City to one Transfer of this Agreement shall not be a waiver to City's, University's or NEBCO's rights under this Agreement as to any subsequent Transfer. Unless otherwise, stated herein, no Transfer shall release Secondary Tenant of its obligations under this Agreement, unless the City, the University and NEBCO agrees to the release in writing.
- D. **Exceptions.** Notwithstanding any contrary provisions herein; in the event there is no Secondary Tenant default under this Agreement, then the following Secondary Tenant Transfers do not require the City's prior approval: Wholly Owned Subsidiary Transfer as described in Paragraph F below. Unless otherwise stated herein, any such Transfer shall not terminate the liability of a Secondary

Tenant, unless a specific release of such liability in writing is given and signed by the City.

- E. **Wholly Owned Subsidiary Transfer.** In the event the Secondary Tenant assigns, sublets or otherwise transfers all its rights, title and interest in this Agreement to a wholly owned affiliate entity (Wholly Owned Affiliate Transfer), then the Secondary Tenant shall not need the City's prior consent; provided that the following conditions are met: (i) the wholly owned affiliate entity is in good standing; and, (ii) the wholly owned affiliate entity assumes in writing all of the Secondary Tenant's rights, title and interest in this Agreement. Upon providing the City written evidence that the above conditions are met, then the Secondary Tenant shall be automatically released and relieved of all liability under this Agreement, and the Administrative Agreements.

XIV. LICENSES AND PERMITS

Secondary Tenant will obtain and maintain all licenses and permits necessary for Secondary Tenant to manage and operate the NSAA Facilities. The City shall cooperate with Secondary Tenant to obtain, maintain, or renew any such licenses and permits.

XV. POSSESSION

Except as provided in this Agreement, the City shall deliver possession of the building site for the NSAA Facilities on or before the date of this Agreement, subject to unavoidable delays beyond the City's control. Delivery of possession prior to the beginning of the term of this Agreement shall not affect the expiration date of this Agreement.

XVI. USE RESTRICTIONS

- A. **Legal Use.** The Secondary Tenant agrees not to commit or permit any act to be performed on the NSAA Facilities or suffer any omission to occur which will be in violation of any statute, regulation, or ordinance of any governmental body.
- B. **Applicable Codes.** The Secondary Tenant agrees to make structural or other improvements to the facility as may be required for applicable building, fire, life safety, accessibility, or other code requirements.
- C. **Advertising.** The Secondary Tenant agrees that all signs erected or placed upon the NSAA Project Site shall conform to applicable provisions of the Lincoln Municipal Code including any applicable special sign district regulations or conditions. Further, the Secondary Tenant agrees to the following advertising restrictions: No advertising prohibited by law. No political advertising including advertising for or against any candidate for political office, ballot item, referendum

or other political issue. No adult oriented advertising of a sexually explicit nature or advertising any adult oriented business, service or products of a sexually explicit nature. No exterior "off site" advertising (as defined by the Lincoln Municipal Code) of any kind is permitted on the NSAA Project Site under this Agreement.

XVII. WARRANTY OF CITY

The City warrants that the City has full right to make this Agreement subject to the terms of this Agreement, and the Secondary Tenant shall have quiet and peaceable possession of the NSAA Facilities during the term of this Agreement as against the acts of all others claiming title to, or a right to the possession of, the NSAA Facilities.

XVIII. RESTORE NSAA FACILITIES

Subject to Article XIII A. above, in the event Secondary Tenant defaults or terminates this Agreement, Secondary Tenant agrees to restore the NSAA Facilities to substantially its condition upon completion of the construction activities, reasonable wear and tear excepted.

XIX. HAZARDOUS MATERIAL

- A. **Pre-existing Conditions.** The Secondary Tenant shall not be liable to the City, other governmental entity, or any other person for pre-existing environmental conditions at the NSAA Project Site as of the effective date of the 2000 Lease Agreement. The City shall defend, indemnify, protect and hold harmless Secondary Tenant and all the officers, employees, and agents of Secondary Tenant against any and all claims or governmental enforcement actions arising out of such pre-existing conditions at the NSAA Project Site. This indemnification shall not include (i) any remediation activities as approved by the Nebraska Department of Environmental Quality pursuant to the Remedial Action Plan Monitoring Act, Neb. Rev. Stat. §§ 81-15,181 to 81-15,188 (Reissue 1999) and (ii) other releases that may be caused or arise out of the NSAA Facilities and Ballpark Facilities development and construction activities on the NSAA Facilities and Ballpark Facilities; provided that each Party to this Agreement hereby covenants and agrees not to sue the other Parties on any cause of action arising out of or related to such activities. The Parties must approve in advance any expenditure in excess of twenty-five thousand dollars (\$25,000) for any remediation activities not previously identified or included as a part of the remediation activities as approved by the Nebraska Department of Environmental Quality in February, 2000 pursuant to the Remedial Action Plan Monitoring Act, Neb. Rev. Stat. §§ 81-15,181 to 81-15,188 (Reissue 1999).

B. **Use Restrictions.** Secondary Tenant shall not cause or permit any Hazardous Material, other than routine construction and maintenance related items to be used, kept or stored in or about the NSAA Facilities by Secondary Tenant, its agents, employees, contractors or invitees, without the prior written consent of the City (which consent shall not unreasonably withhold as long as Secondary Tenant demonstrates to City's reasonable satisfaction that such Hazardous Material is necessary or useful to Secondary Tenant's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material). If Secondary Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the NSAA Facilities caused or permitted by Secondary Tenant results in contamination of the NSAA Facilities, then Secondary Tenant shall defend, indemnify, protect and hold harmless the City and all the officers, employees, and agents of the City against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the NSAA Facilities, damages for the loss or restriction on use of rentable or usable space or of any amenity of the NSAA Facilities, damages arising from any adverse impact on marketing of space, and sums paid in settlement or claims, attorney's fees, consultant fees and expert fees) which arise during or after the term of this Agreement as a result of such breach or contamination. This indemnification of City by Secondary Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the NSAA Facilities attributable to the Secondary Tenant. Without limiting the foregoing, if the presence of any Hazardous Material on the NSAA Facilities used, kept or stored by Secondary Tenant results in any contamination of the NSAA Facilities, Secondary Tenant shall promptly take all actions at its sole expense as are necessary to return the NSAA Facilities to the condition existing prior to the Secondary Tenant's introduction of any such Hazardous Material to the NSAA Facilities; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long term or short term effect on the NSAA Facilities.

XX. EMINENT DOMAIN

If the entire NSAA Facilities are taken by eminent domain, this Agreement and the **Construction Agreement** shall automatically terminate as of the date of the taking. If a portion of the NSAA Facilities is taken by eminent domain, the Secondary Tenant shall have the right to terminate this Agreement and the Construction Agreement by giving written notice thereof to the City within ninety (90) days after the date of taking. Such notice shall state Secondary Tenant's intention to terminate this Agreement not less than thirty (30) days after City's receipt of such notice. If a portion of the NSAA

Facilities is taken by eminent domain and this Agreement and the Construction Agreement are not terminated by Secondary Tenant, then the Secondary Tenant shall, at its expense, restore the NSAA Facilities to as near the condition, wear and tear excepted, which existed immediately prior to the date of taking as reasonably possible. Damages awarded for a taking under the power of eminent domain for the whole NSAA Facilities, shall be the City's; provided that, the Secondary Tenant shall be entitled to the greater of (i) any separate award made to Secondary Tenant or (ii) an amount equal to the costs of the NSAA Facilities improvements paid for by Secondary Tenant not to exceed the unamortized cost of such improvements with such costs amortized over the term of seven hundred seventy three (773) months; provided that the amount under (ii) shall not exceed the amount of the City's condemnation award. In the case of a taking under the power of eminent domain for a portion of the NSAA Facilities, the Secondary Tenant shall be entitled to any separate award for damages or improvements to the NSAA Facilities paid for by Secondary Tenant. The term eminent domain shall include the exercise of any similar governmental power and any purchase or other acquisition under threat of eminent domain.

XXI. FIRE AND OTHER CASUALTY

In the event of fire or other casualty rendering the NSAA Facilities or any portion thereof untenable, any insurance proceeds paid or disbursed to the Parties on account of such casualty (proceeds) shall be held in trust for the purposes of paying the cost of the casualty repair work or for distribution as provided in this paragraph. Within thirty (30) days after receipt of the proceeds, the Secondary Tenant may unilaterally determine whether to rebuild or repair the untenable condition. Upon the election to rebuild or repair the untenable condition, the Secondary Tenant shall timely complete the same on a replacement basis and in the event the cost exceeds the amount of insurance proceeds, the Secondary Tenant shall be obligated to complete the repair work and make additional contributions, payments or capitalization toward the costs of the casualty repair work. If the entire NSAA Facilities are untenable and the Secondary Tenant does not elect to rebuild or repair, then the term of this Agreement shall terminate and the proceeds shall be distributed in a pro-rata amount equal to each the Secondary Tenant's capitalization under Article VII amortized over the term of **seven hundred seventy-three (773)** months with the remainder, if any, distributed to the City. If a portion of the NSAA Facilities are untenable, and the Secondary Tenant is not in breach of this Agreement and the Secondary Tenant does not elect to rebuild or repair, the proceeds shall be distributed in a pro-rata amount equal to Secondary Tenant's capitalization under Article VII reduced by the percentage of the NSAA Facilities that remains untenable amortized over the term of **seven hundred seventy-three (773)** months with the remainder, if any, distributed to the City. Any Party may request an independent MAI appraisal to determine the percentage of the NSAA Facilities that remains untenable.

XXII. INSURANCE

- A. **Liability Insurance.** The Secondary Tenant shall provide, at Secondary Tenant's expense, general liability coverage and any insurance coverage as specified in this Article. The City may reasonably require additional liability or property coverage for Special Events involving pyrotechnical displays or other unusual or hazardous activities. All insurers must be approved by and be satisfactory to City.
- B. **Hazard Insurance Required.** The Secondary Tenant shall provide, at Secondary Tenant's sole cost and expense, at replacement value for the NSAA Facilities (including the building, improvements and contents), and with insurers approved by and satisfactory to the City, insurance against loss by special perils. In the event the Secondary Tenant fails, refuses or otherwise causes, suffers or allows the insurance to terminate for any reason, then the City or Primary Tenant shall have the ability, but not the obligation, to obtain and keep in full force and effect during the Term hereof, insurance against loss by special perils, with the cost of securing the same to be reimbursed by the Secondary Tenant hereunder.
- C. **Terms of Insurance.** All insurance policies maintained pursuant to this Lease shall name Secondary Tenant, Primary Tenant and City as insureds, as their respective interests may appear. All insurance policies maintained pursuant to this Lease shall provide that there shall be no cancellation, non-renewal, termination for any reason, or modification without at least fifteen (15) days prior written notification to City. It is understood and agreed that Secondary Tenant maintains and will continue to maintain automobile liability coverage for any motor vehicle operations related to the Secondary Tenant's use of the Facilities. Copies of all policies of insurance required by this Lease shall be delivered to and retained by City. The amounts of such coverages shall be as follows:
1. For bodily injury or damages, fatal or non-fatal, including product liability, liquor liability, spectator and participant liability, a combined single limit for any one occurrence of \$2,000,000.
 2. For property damage to the extent of \$100,000 each occurrence, \$500,000 aggregate.
 3. Garagekeeper's Liability. Commencing on Substantial Completion, the Secondary Tenant shall provide Garagekeeper's insurance for physical damage to parked vehicles in the amount of \$100,000 combined single limit for each occurrence.
 4. 'Umbrella' or Excess Coverage in the amount of \$5,000,000.
 5. Premises and Operations Liability. Commencing on Substantial Completion, the Secondary Tenant shall provide Premises and Operations Liability insurance covering claims arising out of the use of or related to the NSAA Project Site in the amount of \$2,000,000 for each occurrence.
- D. **Failure to Renew or Have Insurance Coverage.** If any policy maintained pursuant to this Lease is not renewed on or before fifteen (15) days prior to its

expiration date or if no insurance policy is in force at any time, the Parties may procure such insurance, pay the premiums therefor, and such sums shall be immediately due and payable with interest, at the rate provided in this Lease, until paid.

- E. **Proof of Loss Upon Damage to Property.** If any loss occurs which may be covered by insurance, Secondary Tenant will immediately notify City of the loss and shall make the proof of loss within the earlier of seven (7) days or the time required under the insurance policy. If Secondary Tenant fails to make the proof of loss, the City may make the proof of loss.
- F. **Settlement with Insurance Carrier.** If the hazard insurance carrier refuses to pay a claim or offers to settle for less than the full cost of repairs or replacement, the Secondary Tenant shall advise the City. Secondary Tenant shall not make a settlement for less than the full cost of repair or replacement without the written consent of City. Any attorney fees or other costs which are incurred by City in any action against an insurance carrier shall be repaid by Secondary Tenant upon demand.
- G. **Employment Related Insurance.** In connection with the employment of its employees, Secondary Tenant shall pay all applicable social security, unemployment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, unemployment insurance and worker's compensation. Secondary Tenant shall indemnify and hold harmless the City from all costs, expenses, claims or damages resulting from any failure of Secondary Tenant to comply with this subparagraph.
- H. **Waiver.** Secondary Tenant and the City expressly waive all rights and claims including claims of subrogation they may have against the other, their subsidiaries and affiliates for loss or damage covered by insurance required in this article. Each insurance policy procured by Secondary Tenant and the City shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any Party prior to the occurrence of a loss.
- I. **Administration.** Secondary Tenant shall administer, defend, process and otherwise handle all claims up to the deductible or self insured retainer amount of any such property or liability policy or liability coverage obtained hereunder; provided that for any insurance coverage obtained by the Parties, the deductible or self insured retainer for such policy or policies shall not exceed \$500,000.
- J. **Contractors and Subcontractors.** Secondary Tenant shall require suitable and adequate insurance coverage commensurate with the coverage required herein for Events, including spectator and participant liability. The amounts and coverages of such insurance shall be subject to the City's Contract Administrator

approval, including Secondary Tenant's standard contract provisions for insurance coverage for contracted Events.

- K. **Revisions.** The insurance coverages and policies may be revised from time to time as may be agreed to by the Administrators of the Parties.

XXIII. SURRENDER

- A. **Peaceably Surrender; City Election.** On the last day of the term of this Agreement or on the earlier termination of this Agreement, the Parties agree that the City shall have the following election:

- (i) As soon as reasonably possible, Secondary Tenant shall peaceably surrender the NSAA Facilities in good condition and repair, reasonable wear and tear excepted, consistent with the Secondary Tenant's duty to make repairs as provided in this Agreement. The Secondary Tenant shall, at its expense, remove all of its Personal Property and equipment from the NSAA Facilities, and any property not removed shall be deemed abandoned. All alterations, additions, and fixtures, other than the Secondary Tenant's Personal Property, equipment and trade fixtures, which have been made or installed by either the City or the Secondary Tenant on the NSAA Facilities shall remain as the City's property and shall be surrendered with the NSAA Facilities as a part of the NSAA Facilities. Trade fixtures shall not include any structural components of any buildings; or,
- (ii) As soon as reasonably possible, Secondary Tenant shall peaceably surrender the NSAA Facilities, remove all of its Personal Property and equipment from the NSAA Facilities, and any property not removed shall be deemed abandoned. Then Secondary Tenant, at its expense, shall demolish the NSAA Facilities (but not open space, parking and driveway areas) and safely remove and dispose of the building rubble materials from the NSAA Project Site; provided that, the City may elect to have the Secondary Tenant not demolish any particular building(s) on the NSAA Facilities and Secondary Tenant shall peaceably surrender the designated building (s) not to be demolished in good condition and repair, reasonable wear and tear excepted, consistent with the Secondary Tenant's duty to make repairs as provided in this Agreement.

The City shall exercise its election of (i) or (ii) above by delivering written notice to the Secondary Tenant within ninety (90) days after the last day of the term of this Agreement or on the earlier termination of this Agreement. The provisions of this section shall survive the termination of this Agreement.

- B. **Failure to Surrender.** If the NSAA Facilities is not surrendered at the end of the term of this Agreement or on the earlier termination of this Agreement, the Secondary Tenant shall defend, indemnify, protect and hold harmless the City and all the officers, employees, and agents of the City against any or all claims, loss or liability resulting from delay by the Secondary Tenant in surrendering the NSAA Facilities. The indemnification includes, but is not limited to, claims made by any succeeding Secondary Tenant founded on such delay. Any succeeding Secondary Tenant is authorized to take legal action against Secondary Tenant to recover its damages from Secondary Tenant. The provisions of this section shall survive the termination of this Agreement.
- C. **Surrender of Keys.** The Secondary Tenant shall promptly surrender all keys for the NSAA Facilities to the City and shall inform the City of combinations on any locks and safes on the NSAA Facilities. Surrender of keys before the end of the term of this Agreement shall not terminate this Agreement unless City accepts the surrender of this Agreement in writing. In no event shall the Secondary Tenant be deemed to have abandoned the property or this Agreement during the term of this Agreement unless the Secondary Tenant first obtains the express written permission of the City. The provisions of this section shall survive the termination of this Agreement.

XXIV. HOLDING OVER

In the event that the Secondary Tenant remains in possession of the NSAA Facilities after the expiration of this Agreement without the execution of a new lease, City may take any legal action to remove the Secondary Tenant. If the City acknowledges the tenancy, then Secondary Tenant is deemed to be occupying the NSAA Facilities as a Secondary Tenant from month-to-month. Any month-to-month tenancy is subject to all the conditions, provisions, and obligations of this Agreement.

XXV. DEFAULT OF SECONDARY TENANT

- A. A default by Secondary Tenant under this Agreement shall occur if any of the following occur, but a default is not limited to the following:
1. The failure of Secondary Tenant to pay any of its monetary obligations under this Agreement when due and payable if such failure continues for thirty (30) days after the City gives notice to Secondary Tenant that such amount was not paid when due;
 2. The Secondary Tenant fails to provide insurance as required by this Agreement and the default continues for more than fourteen (14) days after notice from City;

3. The Secondary Tenant violates or defaults in any of the other covenants, agreements, stipulations or conditions herein and such violation or default shall continue for a period of thirty (30) days after written notice from the City of such violation of default; provided, however, that with respect to any failure which cannot reasonably be cured within thirty (30) days, a default shall not be considered to have occurred if Secondary Tenant commences to cure such failure within such thirty (30) day period and continues to proceed diligently with the cure of such failure;
 4. If a Secondary Tenant shall become insolvent, make an assignment for the benefit of its creditors, or if a receiver is appointed for the Secondary Tenant or the filing by or against Secondary Tenant of a petition to have Secondary Tenant adjudged a bankrupt or a petition for reorganization or arrangement under bankruptcy law or law affecting creditors rights, unless, in the case of a petition filed against Secondary Tenant, such petition is dismissed within ninety (90) days; the appointment of a trustee or a receiver to take possession of the Premises, where possession is not restored to Secondary Tenant within ninety (90) days; or the attachment, execution or other judicial seizure of substantially all of Secondary Tenant's assets located at the Premises or of Secondary Tenant's interest in this Lease, where such seizure is not discharged in ninety (90) days.
 5. If any guarantor of this Agreement shall become insolvent, make an assignment for the benefit of its creditors, a receiver is appointed for the guarantor, file a voluntary bankruptcy proceeding or have an involuntary bankruptcy petition filed against the guarantor which is not dismissed within one hundred twenty (120) days; or,
 6. Abandonment of the property by the Secondary Tenant (any absence by Secondary Tenant for more than fourteen (14) days without notice to City after the City has delivered notice to Secondary Tenant to confirm Secondary Tenant's abandonment shall be presumed to be an abandonment).
- B. Notwithstanding any contrary provision herein, an event or default by the Secondary Tenant shall not be deemed a default by the Primary Tenants and the Primary Tenants shall be entitled to continue to enjoy and exercise its rights, title and interest hereunder. In the event the City shall deliver any notice or demand to NEBCO or the University with respect to any event or default of its obligations or covenants in this Agreement, Interlocal Agreement, Memorandum of Agreement or any Administrative Agreement, the Secondary Tenant shall be entitled to continue to enjoy and exercise its rights, title and interest hereunder without interruption.

XXVI. REMEDIES UPON DEFAULT

- A. **Not Exclusive.** The remedies provided in this paragraph are not exclusive and are in addition to any other remedies now or later allowed by law. If any default set forth in this Agreement shall occur and the Secondary Tenant fails to cure the same within the express curative time period herein, then:
1. The City may, at its option, declare this Agreement forfeited, the lease's term ended, have the right to reenter the NSAA Facilities and have the right to take possession of the NSAA Facilities without any further obligation to Secondary Tenant. City may remove all persons and property at the cost of Secondary Tenant.
 2. City may instead elect to keep Secondary Tenant in possession and continue to have all rights and remedies under this Agreement. If City elects to keep Secondary Tenant in possession, City shall have the rights under subparagraph A for any future defaults or for any previous default which remains uncured.
 3. If City elects under subparagraph 2 to keep this Agreement in force, City may lease the NSAA Facilities at a rate of rent determined by City to be reasonable. Secondary Tenant shall pay to City any costs incurred in leasing the NSAA Facilities and any rents under this Agreement in excess of the rent which City actually receives from new Secondary Tenant. The new Secondary Tenant may pay rents directly to City.
 4. The City may seek any remedy at law or in equity, including specific performance.
- B. **Interpretation.** Nothing in this paragraph shall be interpreted to release Secondary Tenant from any liability for any indemnification provided to City under this Agreement for any occurrence or omission prior to the date of termination of this Agreement. No delay or omission of the City in exercising any remedies or power accruing upon any default shall impair any remedies or power or shall be construed to be a waiver or any default or any acquiescence therein.

XXVII. INTEREST

If the Secondary Tenant fails to perform any of its promises contained in this Agreement, then any unpaid sum advanced by the City under the terms of this Agreement shall bear interest from the due date or the date of payment by the City, respectively, to the date of payment to the City by the Secondary Tenant at the rate of 14% per annum. If either the University or NEBCO advances to cure the Secondary Tenant's event or default under Article XXV B., then any unpaid sum advanced by such

Primary Tenant advancing monies under the terms of this Agreement shall bear interest from the date of the advancement at the rate of 14% per annum.

XXVIII. DEFAULT OF CITY; REMEDIES

In the event the City fails to comply with any of the material terms hereof, then the Secondary Tenant may declare a default thirty (30) days after the City receives written notice specifying the nature thereof, provided, however, that with respect to any failure which cannot reasonably be cured within thirty (30) days, a default shall not be considered to have occurred if the City commences to cure such failure within such thirty (30) day period and continues to proceed diligently with the cure of such failure. If any default by the City shall occur and the City fails to cure the same within the express curative time period herein provided, then the Secondary Tenant may without notice or demand (i) terminate this Agreement and (ii) seek any remedy at law or in equity, including specific performance. No delay or omission of Secondary Tenant in exercising any remedies or power accruing upon any default by the City shall impair any remedies or power or shall be construed to be a waiver of any default or any acquiescence therein.

XXIX. HOLD HARMLESS

Except for (i) claims covered by insurance as provided in Article XXV H. and (ii) City Events or Primary Tenant Events as provided in the Administrative Agreements, (iii) the negligence or intentional misconduct attributable to the Primary Tenant or the City as the case may be, the Secondary Tenant agrees to defend, indemnify, protect and hold harmless the Primary Tenant and the City and all the officers, employees, and agents of the Primary Tenant and the City against any or all claims or liability for damages to any person or property in or about the NSAA Facilities. The Primary Tenant and the City shall not be liable to the Secondary Tenant, its agents, employees, representatives, customers or invitees for any personal injury, death or damage to property caused by theft, burglary, water, gas, electricity, fire or for any other cause occurring on or about the NSAA Facilities not caused by the negligence or intentional misconduct attributable to the Primary Tenant or the City as the case may be.

XXX. PERSONAL PROPERTY AT SECONDARY TENANT'S RISK

All Personal Property including fixtures kept, stored or maintained on the NSAA Facilities shall be so kept, stored or maintained at the sole risk of the Secondary Tenant.

XXXI. CUMULATIVE RIGHTS

No right or remedy given in this Agreement to the Secondary Tenant or the City is intended to be exclusive of any other right or remedy hereof provided by law. Each right and each remedy shall be cumulative and in addition to every other right or remedy given in this Agreement or now or hereafter existing at law or in equity or by statute.

XXXII. FURTHER ASSURANCES

A. **Written Certification.** In addition to any other information which may reasonably be requested, any Party shall without charge, at any time and from time to time hereafter, within fourteen (14) days after written request from another Party for the same, certify by written instrument duly executed and acknowledged to any person, firm or corporation the following information which was specified in such request:

1. Whether this Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;
2. Whether this Agreement is still valid;
3. The existence of any default under this Agreement;
4. The existence of any claims or amounts owed to such Party by any other Party; and
5. The commencement and expiration dates of the term of this Agreement.

B. **Reliance.** Any such certificate may be relied on by the Party who requested it and by any other person, firm or corporation to whom it may be exhibited or delivered, and the contents of the certificate shall be binding on the Party executing it.

XXXIII. NOTICE

A. **Delivery.** If any notice is required to be given under this Agreement, it may only be given in writing and delivered by mail, telegram, personal delivery, facsimile transmission, or electronic data transmission. Delivery of notice shall be effective as follows:

1. Delivery by any means other than mail shall be effective upon receipt.
2. Delivery by mail may be by first class mail, certified mail or registered mail.
3. Delivery by first class mail is complete upon the third postal business day after mailing.
4. Delivery by certified mail or registered mail is complete upon delivery; if the certified mail is not delivered as a result of refusal to accept, then upon the date of the refusal to accept; or if there is a failure of delivery as a result of the inability of the post office to deliver after three attempts at

delivery (to the last-known address as provided in this Agreement) have been made, then upon the date of the last attempt.

5. Delivery may be made to any agent for service of process.
6. If the Party is a corporation, delivery of notice may be made to the President. If the Party is a partnership, notice may be given to any general partner.

B. Addresses. For purposes of mailing of notice under this Agreement or as otherwise required by law, the mailing addresses of the Parties are:

1. To the University: Chancellor
201 Canfield Administration Building
University of Nebraska
Lincoln, NE 68588

with a copy to: Vice Chancellor for Business and Finance
210 Canfield Administration Building
University of Nebraska-Lincoln
Lincoln, NE 68588

2. To the City: Mayor
555 South 10th Street
Lincoln, NE 68508

with a copy to: City Attorney
575 South 10th Street
Lincoln, NE 68508

3. To NEBCO: President
1815 Y Street
Lincoln, NE 68501

with a copy to: Corporate Secretary
1815 Y Street
Lincoln, NE 68501

4. To NSAA: Executive Director
8230 Beechwood Drive
Lincoln, NE 68505-0447

C. Changes. Each Party shall supply any address changes to the other Party in writing. Any Party may change its address by giving notice in writing, stating its new address, to any other Party. The newly designated address shall be that Party's address for the purpose of all communications, demands, notices or objections permitted or required to be given or served under this Agreement.

XXXIV. OTHER PROVISIONS

- A. **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the Parties to this Agreement and their respective assigns, executors, heirs, personal representatives, and successors.
- B. **Recordation.** This Agreement or a summary memorandum thereof shall be recorded with the Register of Deeds of Lancaster County.
- C. **Amendment.** No amendment of this Agreement shall be valid unless it is in writing and is signed by the Parties or by their duly authorized representatives, and unless it specifies the nature and extent of the amendment.
- D. **Severable Provisions.** Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.
- E. **Entire Agreement.** This Agreement contains the entire understanding of the Parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the Parties with respect to such subject matter.
- F. **Representations.** No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either Party hereto to the other unless expressly stated in this Agreement. No Party has relied on any verbal representations, agreements, or understandings not expressly set forth in this Agreement.
- G. **Duplicate Originals.** This Agreement may be executed in several duplicate originals, but all copies shall be only one agreement.
- H. **Captions, Headings, or Titles.** All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement as a limitation of the scope of the particular paragraphs or sections to which they apply.
- I. **Waiver.** Any waiver by any Party of a default of any other Party of this Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the Parties which varies from the terms of this Agreement shall be a waiver of any Party's right to demand exact compliance with the terms of this Agreement.

- J. **Grammatical Changes.** The use of any particular gender in this Agreement shall refer to all genders. The use of the singular of an expression may be read as the plural and the use of the plural may be read as the singular.
- K. **Interpretation and Reliance.** No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision thereof.
- L. **Nebraska Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Nebraska.
- M. **Non-Discrimination.** Secondary Tenant shall not discriminate against any person because of race, color, sex, creed, religion, ancestry, national origin, age, marital status or disability, to fail or refuse to hire, or discharge, an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any other term or condition of employment pursuant to the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. §48-1122 (Reiss. 2004 as amended).
- N. **Time.** Times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, hereto or for the occurrence of any event provided for therein, shall be a Saturday, Sunday or legal holiday observed by the City, then the date for such performance, delivery, completion, observance or occurrence shall automatically be extended to the next calendar day that is not a Saturday, Sunday or legal holiday.
- O. **Incorporation of Attachments, Appendices, and Exhibits.** All Attachments, Appendices, and Exhibits attached to this Agreement are incorporated herein by this reference in their entirety and made a part hereof for all purposes.
- P. **Parties in Interest: Limitation on Rights of Others.** The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted assigns, executors, heirs, personal representatives and successors. Nothing in this Agreement, whether express or implied, shall be construed to give any person (other than the Parties as expressly provided therein) any legal or equitable right, remedy or claim under or in respect of such instrument or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of such instrument.
- Q. **Method of Payment.** All amounts required to be paid by any Party to the other Party or any person, either under this Agreement or under any other

Administrative Agreements, shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts, by check, wire transfer, or other acceptable method of payment, of immediately available federal funds to the account located in the United States as such Party may specify by notice to the other Parties. If any payment under this Agreement is required to be made on a Saturday, Sunday or legal holiday observed by the City, then the date for such performance, delivery, completion, observance or occurrence shall automatically be extended to the next calendar day that is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as of the day and year first written above.

Attest:

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA**

Corporation Secretary

By: _____
James B. Milliken
University of Nebraska President

Approved as to Form:

General Counsel, University of Nebraska

THE CITY OF LINCOLN, NEBRASKA

By: _____
Coleen J. Seng, Mayor

Approved as to form:

City Attorney

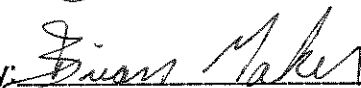
NEBCO, Inc.

By: _____
James P. Abel, Chairman

By: _____
Charles D. Meyer, Treasurer

**NEBRASKA SCHOOL ACTIVITIES
ASSOCIATION**

By: 
James Tenopir, Executive Director

By: 
Brian Maher, Chairperson,
Board of Control

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this _____ of
_____, 2006, by Coleen Seng, Mayor of the City of Lincoln, Nebraska,
a political subdivision of the State of Nebraska, on behalf of the political subdivision

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of
_____, 2006, by University of Nebraska President James B. Milliken, a
public body corporate, on behalf of the public body corporate.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledge before me this 7th day of April, 2006 by James P. Abel, Chairman of NEBCO, Inc., a Nebraska corporation, on behalf of the corporation.



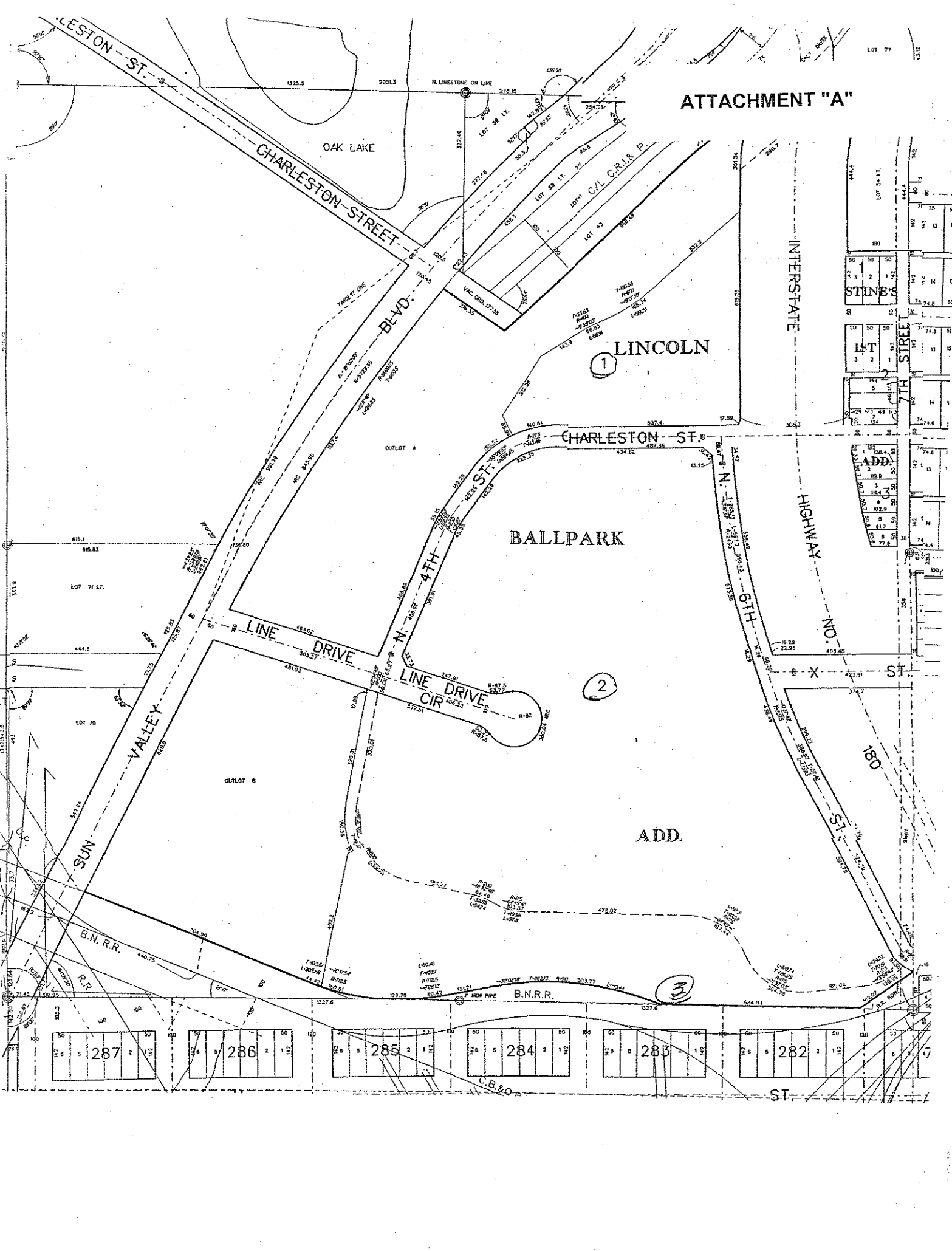
Debra M. Velder
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledge before me this _____ day of _____, 2006, by James Tenopir, Executive Director of the Nebraska School Activities Association, a Nebraska non-profit corporation, on behalf of the corporation.

Notary Public

ATTACHMENT "A"



ATTACHMENT "B"

Legal Description

NSAA Project Site: Block 1, Lot 1, Lincoln Ballpark Addition, Lancaster County Nebraska.

Leased Premises: Attachment A, Parcel A (now Block 1, Lot 1, Lincoln Ballpark Addition).as more particularly described in Attachment B, Parcel A..